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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-third session

SUMMARY RECORD OF THE 1281st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 6 August 1998, at 10 a.m.

Chairman: Mr. ABOUL-NASR

later: Mr. SHERIFIS
(Vice-Chairman)

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GE.98-17505 (E)

The meeting was called to order at 10.20 a.m.

ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-SECOND SESSION ON THE ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (agenda item 6)

1. Mr. BANTON said that the Third Committee of the General Assembly had said very little about the Committee's annual report (A/52/18) because it had been considered as part of a cluster of agenda items. Mr. Valencia Rodriguez had spoken during the debate as a representative of his State and then as a member of the Committee. He had conveyed the Committee's desire to strengthen communication with the General Assembly and its wish to facilitate dialogue with States parties by holding some of its sessions in New York, an idea that had been endorsed by the Syrian Arab Republic and India. He had also expressed the Committee's concern at the tendency of some States to impinge on the independence of their nationals who were members of the Committee.

2. He drew the Committee's attention to General Assembly resolution 52/110 on the report of the Committee, particularly operative paragraphs 4, 5 and 6 in which the work of the Committee was commended and encouraged.

3. Several paragraphs in General Assembly resolution 52/118 of 12 December 1997, on effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights, were particularly noteworthy. The ninth preambular paragraph was a reminder of many delegations' concern that the work of human rights treaty bodies was being hampered because documents, for example, were not always available in applicable working languages on account of a lack of adequate resources. Operative paragraph 5 also mentioned the question of proper levels of financing and staffing.

4. Paragraph 8 reiterated that the reporting burden on States should be reduced as far as possible. In the same vein, operative paragraph 9 noted the benefit of reporting focused on a limited range of issues, a point relevant to the Committee's efforts to reduce the reporting burden by making its concluding observations more specific and indicating clearly the information it wanted States parties to include in their reports.

5. Paragraph 23 was innovative in that it stressed how important it was that the candidates States nominated for membership of human rights bodies should have recognized competence in the field of human rights. Paragraph 24 referred to the fact that the members of three of the six human rights treaty bodies had honoraria, while members of the other three did not, and that the Secretary-General should try to "improve coherence" in that regard. Paragraph 27 provided further encouragement to the Committee in respect of its agenda item on the prevention of racial discrimination, including early warning measures and urgent action procedures. The Committee should take note of General Assembly resolutions 52/110 and 52/118.

6. Mr. VALENCIA RODRIGUEZ said that because of the Third Committee's heavy workload, agenda items were dealt with in clusters, which was why the report of the Committee had not been discussed separately. In his statement to the Third Committee, he had stressed that he was raising certain issues on behalf

of the Committee, as an independent expert. He had been told, informally, that because he was officially representing a State in the Third Committee, he was not strictly speaking competent to speak on behalf of the Committee and that the Chairman of the Committee was the only person who could do so.

7. Operative paragraph 23 of resolution 52/118 reflected his statement to the effect that members of the Committee acted in their personal capacity and should not be subjected to pressure from or given instructions by their Governments.

8. The CHAIRMAN said that he regretted that the report of the Committee had not been given the attention it deserved because of the clustering of agenda items. The financial implications of sending the Chairman to address the Third Committee needed to be considered.

9. Mr. VALENCIA RODRIGUEZ, replying to a question by Mr. SHAHI, said that paragraph 24 of resolution 52/118 referred to an area which was dealt with by a very powerful committee, the Advisory Committee on Administrative and Budgetary Questions, whose recommendations formed the basis for the decisions of the Fifth Committee of the General Assembly. Those Committees would also determine the feasibility or otherwise of the Committee's request to hold some sessions in New York, on the basis of the budgetary implications.

10. Mr. de GOUTTES said that he had taken particular note of the reference in resolution 52/118 to difficulties surrounding the use of working languages and the availability of documents in those languages. The Secretary-General should be urged to allocate funds from the regular budget of the United Nations to remedy the situation.

11. Mr. SHERIFIS asked whether the report of the Secretary-General, referred to in operative paragraph 24 of resolution 52/118, had been compiled, and whether anyone on the Third Committee had objected to the Committee on the Elimination of Racial Discrimination holding some of its sessions in New York.

12. Mr. HUSBANDS (Secretary of the Committee) said that he would check whether the report was available.

13. Mr. VALENCIA RODRIGUEZ said that, as far as he remembered, no one had voiced any objection to sessions being held in New York.

14. The CHAIRMAN said that some western European countries had, informally, come out against the idea.

15. Mr. SHAHI asked whether the Committee was being discriminated against in terms of the payment of honoraria.

16. The CHAIRMAN said that it was true that in certain areas, the Committee was not being treated on an equal footing.

17. He assumed that the Committee wished to take note of General Assembly resolutions 52/110 and 52/118.

18. It was so agreed.

ORGANIZATIONAL AND OTHER MATTERS

Draft general recommendations

Proposed amendment to General Recommendation XIV (CERD/C/53/Misc.6)

19. Mr. BANTON drew the Committee's attention to his proposed amendment (CERD/C/53/Misc.6) to General Recommendation XIV, consisting of a new paragraph to be inserted after the existing paragraph 2. In drawing up the amendment, he had been thinking of a situation where, for example, a State wished to build a hydroelectric station, which would entail flooding large areas of land and moving an ethnically distinct group of people from their homes. That would constitute discrimination in effect under the Convention. As far as he was aware, however, all States which had adopted legislation on indirect discrimination had included a proviso that an action should not be considered indirect discrimination if it was justified on other grounds. The Discrimination (Employment and Occupation) Convention, No. 111 (1958) adopted by the International Labour Organization contained the same provision, but the International Convention on the Elimination of All Forms of Racial Discrimination did not. He was not sure that the provision in the first sentence of paragraph 2 of General Recommendation XIV was sufficient to cover cases such as the one he had described, which was why he was proposing the amendment, but he intended to conduct informal consultations with other members before the Committee took a decision on the text.

20. The CHAIRMAN, speaking in his personal capacity, said that he preferred to treat each case according to its merits, rather than drawing up new general recommendations which might prove too restrictive.

21. Mr. DIACONU agreed that situations could indeed arise where an action which would otherwise constitute indirect discrimination could be justified on other grounds, and it was important that the Committee should not lose sight of the legitimate interests of society as a whole. Mr. Banton's proposal would in any case require redrafting to be acceptable. For example, the French version of subparagraph (b) of the proposed amendment contained the undesirable implication that the Committee might choose not to consider a case at all. In fact, the amendment might not be necessary, for in his view General Recommendation XIV, paragraph 2, covered the general situation in question and so, arguably, did article 1.4 of the Convention.

22. Mr. VALENCIA RODRIGUEZ expressed the opinion that General Recommendation XIV, paragraph 2, adequately covered the situations described by Mr. Banton. It did not seem desirable for the Committee to adopt an amendment which might restrict its interpretation of future cases. A number of terms used in the text, such as differentiations "ostensibly" based on grounds other than those listed in article 1.1 and "the inherent requirements of the position" might be open to various interpretations. It would be better to consider each case on its merits.

23. Mr. RECHETOV said that the issue raised by Mr. Banton was an extremely important one. In his own country, the Government had once planned to divert the Siberian rivers southwards to Central Asia, which would have been a death sentence for many of the Siberian native peoples. He did not agree that each

case should be discussed on its merits: if the Committee could draw up a sound text, consistent with the Convention, which balanced the interests of indigenous peoples with the social and economic development of the country as a whole, it would be useful both to Governments and to indigenous peoples themselves. It would certainly be useful to his country.

24. Mrs. SADIO ALI said that Mr. Banton's proposal was a very valuable one. In her own country, many ethnic groups had been displaced as a result of Government construction schemes: in one particular case, the Government was pressing on with a scheme in the Himalayas, even though the chosen site could not bear the weight of the new construction.

25. The CHAIRMAN suggested that Mr. Banton should consult members informally and submit a revised draft of his proposal at a later date.

26. It was so agreed.

Draft general recommendation concerning demographic information on ethnic minorities (CERD/C/52/Misc.46)

27. Mr. DIACONU invited the Committee to consider the draft general recommendation he had prepared (CERD/C/52/Misc.46). The Committee asked States parties to include in their periodic reports demographic information about persons of different races, national or ethnic minorities or ethnic groups. Some States parties recognized the presence in their territory of some minorities or some national or ethnic groups, while disregarding other groups. Moreover, they did not apply the same criteria uniformly to all groups. The draft general recommendation recalled the Committee's General Recommendation IV of 1973 and paragraph 8 of its General guidelines regarding the form and contents of reports (CERD/C/70/Rev.3), and invited States parties to include in their periodic reports relevant information on the demographic composition of their populations, in accordance with the provisions of article 1 of the Convention.

28. The CHAIRMAN, speaking in his personal capacity, called upon members to remember the situation of countries outside the developed world. Developing countries with limited resources would find it very difficult to collect the kind of information requested in the draft. In some countries, it was expressly forbidden to put people's race or ethnic origin on their identity documents, which made it extremely difficult for the Government to collect such information. Of course, the information should be provided where possible, but it was important to maintain some flexibility. Many countries had more important priorities than the production of statistics.

29. Mr. NOBEL said that sometimes, rightly or wrongly, individuals objected to having their ethnic origin recorded by the authorities. He considered that individuals should declare the ethnic group to which they considered themselves to belong, if they wished.

30. He was also concerned about the problem of stateless persons. Governments had certain responsibilities towards them, under the Convention

relating to the Status of Stateless Persons of 1954, and might be tempted to assign a nationality, not necessarily the correct one, to refugees in order to evade those responsibilities.

31. Mr. VALENCIA RODRIGUEZ said that the issue was an important but sensitive one. In some countries, it was practically impossible to conduct population censuses. Some ethnic groups were opposed to such censuses for cultural reasons or because of possible adverse economic consequences such as taxation or effects on property, so the census might not be reliable anyway.

32. The statement in paragraph 3 of the draft that "Some States parties ... decide at their own discretion which groups constitute minorities or ethnic groups" was a repetition of the statement in paragraph 2 that "a number of States parties recognize the presence ... of some minorities or some national or ethnic groups, while disregarding other groups", and could be deleted.

33. Mr. de GOUTTES said that the proposed new general recommendation appeared to contain two new elements. The first, in paragraphs 1 to 3, called upon States to use objective and uniform criteria to decide on the definition of an ethnic minority. He had no objection to that part. However, he was more doubtful about the request in paragraph 4 for information about the race, colour, descent and national or ethnic origin of the population of the State party, including immigrants, refugees, stateless persons, etc. As had been said, those were vulnerable groups who would not necessarily wish to divulge information about their ethnic origins to the authorities. He wondered whether the Committee should urge States parties to demand such information.

34. Mr. van BOVEN took the Chairman's point that the draft referred extensively to national minorities, which were more of an issue in Europe than elsewhere in the world. However, in recent years, international human rights activities had increasingly concentrated on national minorities, with the adoption of the Framework Convention for the Protection of National Minorities, the case law of the Human Rights Committee in respect of article 27 of the International Covenant on Civil and Political Rights, dealing with the rights of ethnic, religious or linguistic minorities, and the work of the Working Group on Minorities of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which had been established pursuant to the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. He therefore felt that a new general recommendation, along the lines of the draft under discussion, would be appropriate.

35. He too had some doubts about paragraph 3 of the draft, notably about the statement in the second sentence that the Committee acknowledged that there was no obligation under international law for States to recognize the existence of minorities or ethnic groups on their territory, which was then qualified by the following sentence. He did feel, however, that the final sentence of the paragraph raised an extremely important point which deserved to be emphasized. For example, he had recently investigated the situation of the Roma and Sinti groups in Germany. Some groups, such as the Jews, enjoyed a special status in Germany, but the Roma and Sinti did not.

36. It was also important to consider the status of migrants. Were they to be considered a "new minority"? It was true that many of the groups in question had arrived relatively recently, but they had nevertheless lived in their new country for a long time, while keeping their own religious practices and cultures.

37. The CHAIRMAN, again urging the Committee to maintain a global rather than simply a European perspective, observed that in some parts of the world such as Africa it was often the majority in a country that was discriminated against. The whole issue was not solely the protection of minorities.

38. Mr. SHAHI said that the draft text was certainly in accord with the Convention but that it dealt with a very sensitive issue. While the Committee regularly requested demographic data, without which it could not make a proper assessment about discrimination on racial or ethnic grounds, it was its practice not to importune States parties for full information on demographic composition, even where inadequate data had been provided. It was often difficult for a Government itself to account for all its country's nationalities or minorities - as in Russia or China, for instance; and many Governments - in Latin America and Africa particularly - feared that such official statistics might fuel internal divisions. He did not think it advisable to ask States parties to collect information on religion, culture and other distinguishing features of immigrants, refugees, stateless persons and the like, because the receiving States might thereby be encouraged to begin discriminating on such bases, whereas those groups needed to be absorbed into the new society. He would therefore omit paragraph 4; he had no objection to paragraph 1; his only reservation on paragraph 2 was that the criteria listed in the last sentence could be very difficult for a State party to apply, especially in Asia and Africa; and, concurring with Mr. van Boven, he would omit the second sentence in paragraph 3.

39. Mr. RECHETOV said that indeed most State party reports failed to provide reliable information on the demographic breakdown of the society. At times the reason was internal instability and the unavailability of data, but usually the omission was deliberate. States did not want to be led into defining the status of individuals, for that would entail a corresponding distribution of material benefits. For the same reason, many refugees or migrants sought to claim that they had achieved minority status.

40. In addition to calling for information, the draft text raised precisely that question of status and thus of the definition of population groups - a definition that eluded even the United Nations. States parties would shy away even more from furnishing information when the issue of status came into it. Perhaps the document should be revised, limiting it simply to a request for objective information about the permanently resident population in a State. The second element of ethnic classification could be dealt with in another paper concerning the need to refrain from discrimination.

41. Mr. GARVALOV, observing that Mr. Diaconu had been fully aware that the matter was a sensitive one, said that the Committee too, must face the facts of the issue raised in the draft. It had always asked for demographic information and, further, for specific information regarding minorities and

national or ethnic groups. The end of the first sentence of paragraph 2, to the effect that States recognized the presence of some of them while disregarding others was simply a statement of fact.

42. It was also a fact that the members of the Committee tended to take a largely European point of view; and certainly, in the Council of Europe, the trend seemed to be to insist that States, even though they had difficulty reaching a common understanding of the term "national minority", must recognize those within their own territories. Looking at the broader picture, there were the valuable United States Department of State reports assessing annually how States the world over treated, specifically, their minorities or racially different ethnic groups and communities.

43. He himself endorsed Mr. Diaconu's language and believed that he should be left to revise his draft in the light of the comments just made but should retain the very important ideas he had raised, so that the paper could be reconsidered at the next session. In the context of the forthcoming World Conference against Racism and Racial Discrimination, Xenophobia and Related Intolerance, there was no escaping the fact that racial discrimination in any State focused mainly on its minorities, and only very rarely on its majority.

44. The CHAIRMAN said that he took it the Committee wished Mr. Diaconu to revise his draft general recommendation in consultation with other members, so that it could be considered at a later stage.

45. It was so decided.

Draft general recommendation on the right to information (CERD/C/53/Misc.5)

46. Mrs. SADIQ ALI, introducing her draft general recommendation entitled "The right to information", noted the increasing importance of information, to which most developing countries did not have adequate access. Paragraph 1 referred to article 19, paragraph 2, of the International Covenant on Civil and Political Rights, establishing the right to information, and paragraph 2 went on to refer to article 5 (d) (viii) and article 7 of the Convention, concerning the provision and use of information. Paragraph 3 indicated that the right to information applied not only to Governments but to all sectors of society. Paragraph 4 encouraged the receipt of information by the Committee from non-governmental organizations (NGOs) and their active participation in distributing information widely at the national and local levels. Paragraph 5 highlighted the Committee's need for information pertaining to the disadvantaged sections of society, while paragraph 6 underscored the importance of access to information in the context of a climate of xenophobia, racism, racial discrimination, ethnic strife and growing income disparities.

47. Mr. YUTZIS said that the topic needed further thought. He saw a contradiction between freedom of expression and the misuse of the media to foment racism and discrimination. He would submit proposed changes in writing to Mrs. Sadiq Ali.

48. Mr. DIACONU said that the objective of the draft had to be clarified. It should not be about the right to information in general, for that did not fall within the Committee's purview, and the title would have to be changed.

The Committee was concerned only with discrimination in the enjoyment of the right to freedom of opinion and expression, under article 5 (d) (viii) of the Convention, and measures adopted by States parties in the field of information to combat racial discrimination, under article 7. As stated in paragraph 2, article 5 did not include the supply of information in respect of human rights violations, and indeed it should not, for that was not the point of the article. The reference to article 7 in that paragraph, on the other hand, was unobjectionable, but there was no connection between the two articles. Also, there was a difference between the right to information and access to information; it was the latter point only that concerned the Committee.

49. A third subject, also with no connection to the two others, was introduced in paragraph 4: the question of information received by the Committee. The first sentence was incorrect in stating that the Committee had recently begun to receive testimony from NGOs, although it was true that they should be encouraged to provide information. In paragraph 5, the first sentence should state that what was of particular importance to the Committee was "access to information" pertaining to disadvantaged sections of society, not "access to the right to information"; but there again, the Committee's only concern was racial discrimination against those disadvantaged sections. Article 7 of the Convention applied there, and States parties should be asked to inform the public as a way of combating racial discrimination. The article 7 aspect should, in his view, be the focus of the draft; the rest complicated the idea of information as a tool against racial discrimination and was hard to follow.

50. The CHAIRMAN, speaking in his personal capacity, drew attention to paragraph 4 of the text, which raised a number of issues that caused him some concern. First, he questioned the appropriateness of the statement to the effect that the Committee had begun to receive testimony from NGOs; surely "information" would be more accurate. Information provided by organizations such as the Anti-Racism Information Service (ARIS) was extremely useful.

51. Furthermore, the third sentence called for the "active participation of NGOs", which he interpreted as an invitation for such organizations to make oral presentations as they did in the Sub-Commission on Prevention of Discrimination and Protection of Minorities. He was in favour of the active participation of States parties and Committee members in the Committee's proceedings, but did not wish to see the Committee become a political forum, like the Sub-Commission, where some States used NGOs to launch accusations at other States or to make personal attacks on Committee members, of the kind he had been subjected to recently. He objected to the ideas put forward in paragraph 4, which in his view ran counter to article 9.2 of the Convention; the adoption of a general recommendation along those lines would necessarily entail a substantive amendment to that article.

52. Mr. Sherifis took the Chair.

53. Mr. van BOVEN concurred with Mr. Diaconu that the text needed to be more focused and the Committee must have a clearer idea of its exact purpose before giving it any further consideration. As to the role of NGOs, he drew attention to operative paragraph 22 of General Assembly resolution 52/118 which recognized the important role played by non-governmental organizations

in the effective implementation of all human rights instruments, and encouraged the exchange of information between the human rights treaty bodies and such organizations. An identical statement was made in operative paragraph 20 of Commission on Human Rights resolution 1998/27. That would seem ample justification for the Committee to make use of such information in its work. Furthermore, it should not be overlooked that NGOs played a vital role at national level both by disseminating information concerning the Convention and encouraging Governments to pay heed to the Committee's concluding observations on reports. He welcomed the ideas put forward by Mrs. Sadiq Ali, but the text before the Committee required considerable revision.

54. Mr. SHAHI commended the initiative taken by Mrs. Sadiq Ali for the Committee to consider the right to information, including the right to seek information in order to discharge its duties. However, paragraph 1 of the text failed to mention several important restrictions on the right to information, as detailed in article 19.3 of the International Covenant on Civil and Political Rights. He endorsed Mr. Diaconu's comments concerning paragraph 2 of the text. Referring to paragraph 3, he said it was generally recognized that in their reports States parties provided information to suit their own purposes and therefore additional input from reliable NGOs was essential, in order to obtain an accurate picture of the situation in terms of racial discrimination in the country. He agreed that the text needed some further review so as to bring it more into line with the provisions of the Convention.

55. Mr. de GOUTTES said that he had understood the text as referring to the right of access to information, and then only where it concerned racial discrimination, rather than to the right to information in general on the dissemination of information which clearly did not come within the Committee's competence. The key paragraph seemed to be paragraph 3, which pointed, inter alia, to the importance of access to alternative sources of information. If his interpretation was correct, then the text would complement the Committee's earlier decision on sources of information (decision 1 (XL)) which provided for the option of using information from non-governmental sources, a concept confirmed by General resolution 52/118.

56. With regard to Mr. Aboul-Nasr's comments, while he understood that, as currently worded, paragraph 4 might pose some problems, he would stress the usefulness of the fairly recent - albeit unofficial - practice of some members holding briefings with relevant national NGOs and associations prior to the Committee's consideration of a given State party's report. He hoped that such an option would remain available to Committee members in future.

57. Mr. RECHETOV said he appreciated Mrs. Sadiq Ali's efforts to broaden the range of information available to the Committee. He had never had any doubts about the vital importance of NGO participation to the work of the Committee. In particular, he appreciated the cooperation that had developed over the years with ARIS, whose input had proved invaluable. Incidentally, he would not oppose the idea of officially allowing NGOs to make oral presentations before the Committee.

58. Regrettably too few NGOs followed the work of the Committee on a regular basis. The main obstacle to the participation of more organizations seemed to be lack of funds. The future of the Committee depended on greater cooperation with a wider range of NGOs. Perhaps that idea could be followed up when drafting the revised text. The purpose of the general recommendation could be to reach out to more NGOs.

59. Mr. YUTZIS said that Mrs. Sadiq Ali's contribution had sparked off an interesting debate on a number of important matters, including participation of NGOs, access to information and how it affected the protection and promotion of rights. He stressed the importance of article 7 of the Convention, a topic which frequently cropped up during the Committee's dialogues with State parties. He hoped that the text could be revised to reflect the views expressed during the discussion and submitted to the Committee at a future meeting for further consideration.

60. Ms. McDOUGALL asked whether it would be possible for the Secretariat, when notifying States parties that their reports were due to be considered by the Committee, to contact interested NGOs as well.

61. Mr. HUSBANDS (Secretary of the Committee) said that new members might not be aware that it was already standard procedure for the Secretariat to solicit information from international and regional NGOs and to consult databases, NGO and other publications for information about national NGOs which might be interested in providing input relating to a State party's report.

62. The CHAIRMAN, speaking in his personal capacity, said that the importance of NGOs in the field of human rights could not be overstated. They played a vital role at the national level in ensuring that States parties complied with the provisions of article 7 of the Convention. As underscored by General Assembly resolution 52/118, the treaty bodies needed to cooperate with the NGO community in order to promote the principles and objectives enshrined in international human rights instruments.

63. Speaking as Chairman, he suggested that Mrs. Sadiq Ali should hold consultations with all members who had commented on her contribution with a view to preparing a revised text, in the form of a draft general recommendation for consideration at a future meeting.

64. It was so agreed.

The meeting rose at 1.05 p.m.